

ENVIRONMENT ACT

Proposed Amendments

JUNE, 2004



Environment and Labour

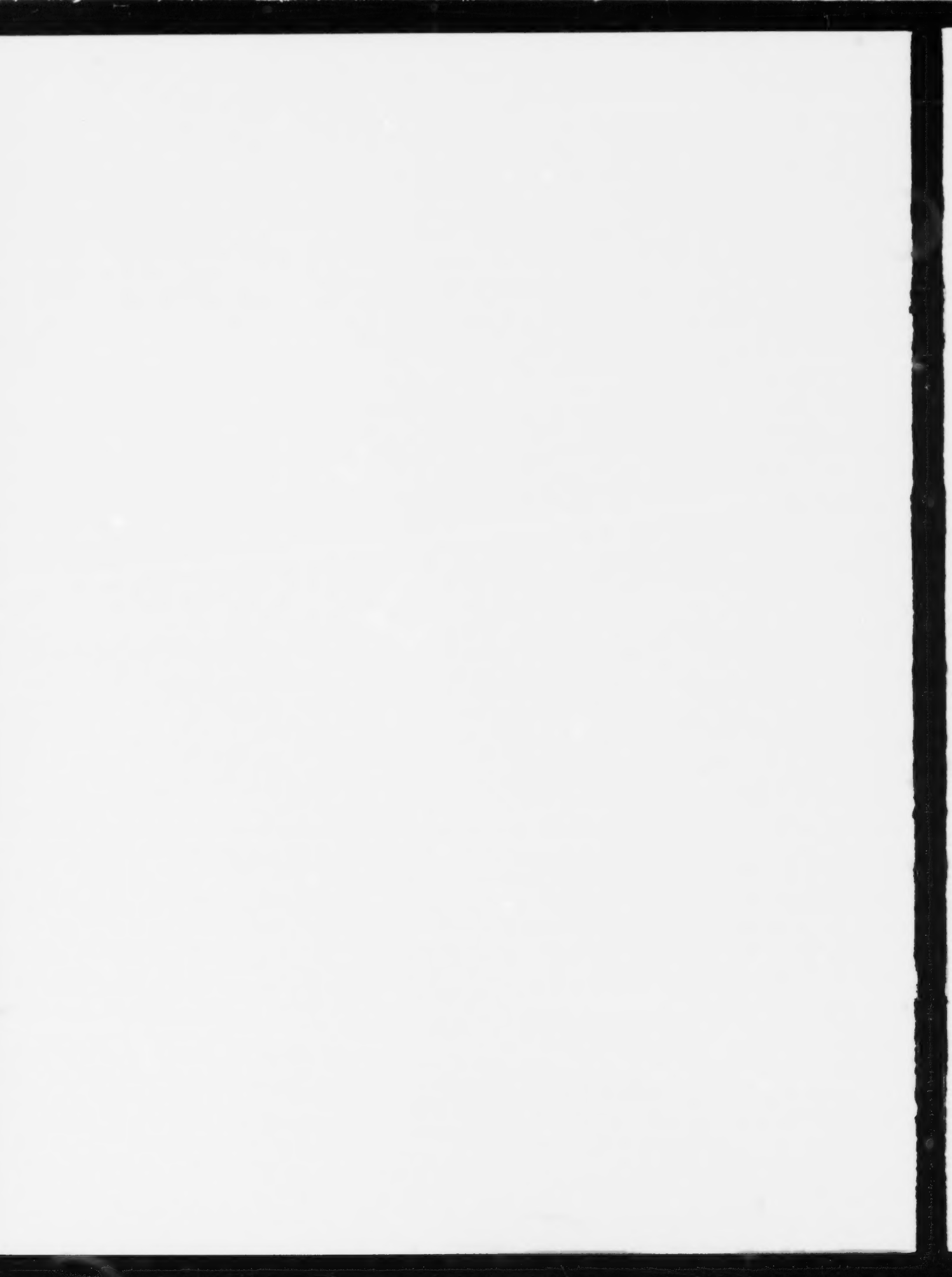


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Introduction

The Environment Act (1995) represents a consolidation of 16 statutes and 44 sets of regulations. A mandated public review of the Environment Act took place in 2000. Nova Scotia Environment and Labour has considered the results of this review and suggestions from many other sources and is now proposing amendments to the Environment Act.

These amendments are designed to

- strengthen the legislation to provide for better management and protection of the environment
- refocus departmental efforts on core responsibilities
- improve clarity

This document presents a summary of the proposed amendments to the act. We invite your written comments on these proposed changes. Please forward them to

Nova Scotia's Environment Act Amendments

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Note: *In this document,*

"act" means the Environment Act

"department" means Nova Scotia Environment and Labour

"Minister" means the Minister of Nova Scotia Environment and Labour

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Application of the Act & Regulations

The Environment Act and regulations provide the authority and the tools needed to manage and protect Nova Scotia's environment. In the current act, some clauses refer to the application of the act, but do not mention the regulations. Proposed amendments clarify that "act" includes "regulations."

The department also wants to make it clear that all information under its control is subject to the Freedom of Information and Protection of Privacy Act.

PROPOSED AMENDMENTS

Application of the Act & Regulations

The department is considering amendments to the Environment Act that will

- *clarify that "act" includes "regulations" in appropriate sections such as ss. 21(1), 119(1), 125(1), 143(f), 157, 158(a),(b),(c),(d),(j), 161, 162, and 163 of the act*
 - *revise s. 10(2) of the act to clarify that all information under the control of the department is subject to the provisions of the Freedom of Information and Protection of Privacy Act, without reference to any specific clause*
-

Adverse Effect and Nuisance Issues

The definition of "adverse effect" (s. 3(c) of the act) helps establish the range of matters the department deals with. The current Environment Act uses a very broad definition of "adverse effect." The practical application of this definition was untested in Nova Scotia at the time the act was proclaimed. Experience has shown that the phrase "reasonable enjoyment of life" contained in the definition is difficult to measure and has involved staff in matters (e.g., noise and odour nuisance complaints) that are not within the core mandate of the department. The department is proposing to clarify the definition of "adverse effect" by removing the words "life or" from the phrase "reasonable enjoyment of life or property." The proposed definition is comparable to definitions of "adverse effect" contained in other provincial and territorial environmental legislation. This amendment will help the department to refocus its resources on priority environmental and human health issues.

Part XI of the act (Air Quality Management) includes reference to "nuisance air contaminants and odour" (s. 111(2)(a)). Amendments are proposed in Part XI of the act to clarify that the Minister has the authority to establish air emission standards for air contaminants, without referencing specific types.

To lay charges under s. 67 of the act (for release of substances into the environment), the department must prove that a "significant adverse effect" has occurred. The term "significant" is difficult to quantify and makes it difficult to enforce this section of the act. Pursuant to s. 61(2) of the act, the Minister may issue a certificate of variance for a term or condition of an approval if the Minister considers that the proposed variance is not likely to cause a "significant adverse effect." Nova Scotia is one of only a few provinces in Canada to use the phrase "significant adverse effect."

PROPOSED AMENDMENTS

Adverse Effect and Nuisance Issues

The department is considering amendments to the Environment Act that will

- *clarify the definition of "adverse effect" by removing the words "life or" from the phrase "or the reasonable enjoyment of life or property"*
 - *remove the adjective "significant" from the term "adverse effect" in sections 61(2) and 67 of the act (This will make enforcement easier.)*
 - *clarify the Minister's authority to establish air emission standards for a range of air contaminants in s. 111(2)(a) of the act—reference to specific categories of contaminants and odours will be deleted, consistent with the goal of refocusing the department's resources on priority environmental and human health issues*
-

Committees

Part II, section 9 of the act provides the Minister with the authority to appoint advisory committees and experts to carry out a number of duties. The proposed amendments will clarify that the Minister has the authority to appoint an individual, as well as a group of individuals and experts, to advise on a broad range of topics.

The act also establishes the management consortium for environmental industries (s. 156(2)(a) and (b)). This committee is inactive. The department has found that task-specific, time-bound advisory committees are cost-effective and flexible ways of engaging the public and stakeholder groups when developing public policy.

PROPOSED AMENDMENTS

Committees

The department is considering amendments to the Environment Act that will

- *eliminate references to the management consortium and provide a mechanism to establish task-specific advisory committees under s. 9 of the act (This will enable more effective use of departmental resources.)*
 - *expand the scope of s. 9 of the act to include*
 - *the appointment of “any person,” in addition to committees and experts, to report to the Minister on the topics listed (This will clarify the Minister’s authority to appoint an individual to advise on specific matters, if appropriate.)*
 - *the addition of “issues related to sustainable development” to the list of topics on which the Minister can seek advice*
-

Nova Scotia Youth Conservation Corps

The Nova Scotia Youth Conservation Corps, established under Part III, s. 29 of the act, provides opportunities for young people to participate in environmental stewardship initiatives. The role of the Corps has evolved since the act was established, and therefore, the purpose of the Nova Scotia Youth Conservation Corps, as outlined in the act, requires updating.

Part XV, s. 143 of the act provides statutory protection from liability for those individuals carrying out duties or exercising powers under the act or regulations. Section 143(f) extends this protection to members of boards, advisory committees, and Corps leaders. In practice, the Corps is organized into teams of two to four people so it is necessary to clarify that this protection applies to the entire team.

PROPOSED AMENDMENTS

Nova Scotia Youth
Conservation Corps

The department is considering amendments to the Environment Act that will

- *update the purpose of the Youth Corps in s. 29(2) of the act to reflect the current scope and direction of the program*
 - *clarify that the protection from liability applies to all members of the Youth Corps team, not just the leader*
-

Environmental Assessment

Part IV of the Environment Act sets out the environmental assessment process in Nova Scotia. The generally accepted term for this process is environmental impact assessment and the department would like to clarify this in the act. When an activity or project meets the definition of "undertaking" in the act (s. 3(az)), the proponent is required to follow this process. The existing definition of "undertaking" requires an activity or project to have an adverse effect or an environmental effect before it is considered an undertaking. Schedule A of the Environmental Assessment Regulations lists the types of activities prescribed as undertakings.

The current act does not provide for the voluntary withdrawal of the registration of an undertaking by the proponent. Also, the Minister does not currently have the authority to amend or revoke an environmental assessment approval for undertakings that are causing adverse effects or environmental effects that cannot be mitigated.

Environmental Assessment *cont.*

The Minister has the authority under s. 38 of the act to refer an environmental assessment report to the Environmental Assessment Board, but currently does not have the authority to refer a focus report to the board.

Some activities or groups of activities have minimal or well-understood environmental impacts. The regulation of these activities can be streamlined, consistent with the recommendations of the Red Tape Reduction Task Force.

PROPOSED AMENDMENTS

Environmental Assessment

The department is considering amendments to the Environment Act that will

- *replace the phrase "environmental assessment" with "environmental impact assessment" to clarify the intent of the process*
 - *clarify the definition of "undertaking" (s. 3(az) of the act) by including activities, projects, etc., that cause or may cause an adverse effect or an environmental effect*
 - *clarify that the Minister has the authority to add undertakings to the list in Schedule A of the Environmental Assessment Regulations*
 - *provide for the voluntary withdrawal of a registration by the proponent*
 - *provide the Minister with the authority to amend or revoke environmental assessment approvals for undertakings that are causing adverse effects or environmental effects that cannot be mitigated*
 - *provide the Minister with the authority to refer a focus report to the Environmental Assessment Board*
 - *remove s. 47(3) of the act that stipulates the requirement to include time limitations in joint assessment agreements*
 - *provide the Governor in Council with the authority to make regulations prescribing the environmental assessment processes for the undertakings exempted under Part IV of the act (This will allow the development of a streamlined assessment process for less complex undertakings that have minimal or well-understood environmental impacts.)*
-

Approvals

Approvals (Part V of the act) are required for activities designated by the Activities Designation Regulations. Approvals include specific terms and conditions the approval holder must comply with. A number of amendments are proposed to strengthen Part V of the act.

Amendments to Approvals

The Walkerton Inquiry was highly critical of the process used by Ontario to manage approvals. It noted the lack of consistent terms and conditions, and in some cases the absence of terms and conditions in water facility approvals. The Inquiry recommended that conditions be added to approvals as required. The Minister's ability to amend an approval under the Environment Act is set out in s. 58. To amend and update an approval to current environmental standards, the department must show that "an adverse effect that was not reasonably foreseeable at the time the approval was issued has occurred or may occur." The result is that many designated activities are operating under approvals that pre-date the current act and are thus subject to less stringent terms and conditions than activities approved under the current act. This increases risk to the environment and could provide an unfair business advantage to the holder of an approval that pre-dates the act.

PROPOSED AMENDMENTS

Amendments to Approvals

The department is considering amendments to the Environment Act that will

- *clearly state in s. 58 of the act the Minister's authority to cancel approvals issued under predecessor legislation (This will eliminate the need to manage approvals issued under predecessor legislation that are no longer required.)*
- *expand the conditions under which the Minister may amend, add, or delete a term or condition from an approval in s. 58 of the act, including the authority to amend an approval in order to meet current environmental standards (This will provide for a more level playing field and better protection of the environment.)*
- *add a clause to s. 58 of the act that enables the Minister to waive the 30-day written notification requirement in s. 58(3) in the case of an emergency, where the change is routine, or if adequate notice has already been given*
- *add to s. 175 of the act a clause that gives the Minister the authority to amend approvals issued under predecessor legislation, consistent with proposed amendments to s. 58 of the act*
- *provide the Governor in Council with authority under s. 66(1) of the act to make regulations respecting the issuance of an approval or certificate of qualification*
- *clearly state the Minister's authority to add to the list of designated activities that require approvals*

Control Program

A control program is a structured process that provides a mechanism for an activity to be brought into compliance. Under the current act, when the department becomes aware that a designated activity is being conducted without an approval, there is no mechanism to enforce compliance, short of prosecution. A control program allows the business some time to plan and implement the changes needed to achieve compliance. A control program is developed in consultation with the department and includes time lines and objectives. The current Environment Act does not provide the authority to implement control programs.

PROPOSED AMENDMENTS

Control Program

The department is considering amendments to the Environment Act that will

- *allow the use of control programs (This will assist those who have no approval or an out-dated approval to move into compliance in accordance with a documented plan.)*

Transfer of Approvals

The Environment Act is ambiguous about the Minister's authority to impose terms and conditions on the transfer of an approval. The proposed amendment will provide the Minister with the authority to include requirements like probation periods and security deposits for inexperienced proponents or higher-risk activities.

PROPOSED AMENDMENTS

Transfer of Approvals

The department is considering amendments to the Environment Act that will

- *clarify that the Minister has the authority to impose terms and conditions on the transfer of an approval*

Registrations

Some designated activities are relatively low risk. Their effects on the environment are understood, and there are well-established environmental standards for them. Registration is an appropriate option for these activities. Holder of registrations will be allowed to carry out a designated activity, as long as they adhere to prescribed standards.

PROPOSED AMENDMENTS

Registrations

The department is considering amendments to the Environment Act that will

- *establish a registration as a recognized compliance tool within the act by adding the term "registration" to appropriate sections throughout the act that currently refer to "approvals": proposed changes include*
 - *giving inspectors the right to enter and inspect facilities with a registration (s. 119(1))*
 - *adding the contravention of a term or condition of a registration to the list of offences in s. 158(e) and (f)*
 - *provide the Governor in Council with authority to make regulations respecting registrations*
-

Environmental Management/Pollution Prevention

The department promotes environmental management systems and pollution prevention plans within business and industry. Proposed amendments to the act provide the Minister with authority to require the development and use of these environmental management tools in certain cases.

PROPOSED AMENDMENTS

Environmental Management/Pollution Prevention

The department is considering amendments to the Environment Act that will

- *include "environmental management" in the Purpose section (s. 2) to update the act*
 - *give the Minister the option of requiring an approval holder to develop and implement a pollution prevention plan or an environmental management system as a term or condition of an approval in s. 56(3) of the act*
 - *give the Minister the option of requiring, as a term of a Ministerial Order, the development and implementation of a pollution prevention plan or an environmental management system*
 - *provide the Governor in Council with the authority to make regulations respecting environmental management systems and pollution prevention plans*
 - *specifically identify pollution prevention, environmental management systems, and best management practices in s. 156(2) of the act (This is consistent with the department's mandate with respect to Part XVII of the act: Environmental Industries, Innovations and Technologies.)*
-

Contaminated Sites Management

Part VI (Release of Substances) and Part VIII (Contaminated Sites) of the act deal with sites in the province that are contaminated. The department is developing a contaminated site management framework and proposing several amendments that will improve its ability to manage contaminated sites.

Application of Parts VI and VIII of the Act

Part VI of the act (Release of Substances) is ambiguous as to its application to past releases. Proposed amendments to Part VI will clarify that it applies to past releases as well as emergency spills. Proposed amendments to Part VIII (Contaminated Sites) of the act will clarify that it applies to "designated" contaminated sites, consistent with the definition of "contaminated site" in s. 3 of the act.

PROPOSED AMENDMENTS

Application of Parts VI and VIII of the Act

The department is considering amendments to the Environment Act that will

- *clarify the scope of Part VI of the act to include the release of a substance, regardless of when the release occurred*
 - *clarify that Part VIII of the act deals with designated contaminated sites by changing the title of the part and by moving the definition of "contaminated site" from s. 3 to Part VIII of the act (All references to contaminated sites in Part VIII will then refer to "designated" contaminated sites.)*
-

Powers of the Minister—Part VI of the Act

If the department adopts the proposed amendments clarifying that Part VI of the act applies to both emergency spills and past releases, the powers available to the Minister under this part will need to be expanded. Most of the proposed new clauses will be similar to existing sections in Part VII and Part VIII.

PROPOSED AMENDMENTS

*Powers of the Minister—
Part VI of the Act*

The department is considering amendments to the Environment Act that will

- *provide the Minister with the authority in Part VI of the act to effectively deal with releases (both emergency spills and past releases) including the authority to*
 - *establish procedures for conducting sampling, analyses, tests, measurements, or monitoring of substances at contaminated sites (similar to s. 78(1)(c))*
 - *determine the manner and time frame in which a contaminated site must be rehabilitated or managed (similar to s. 90(b))*
 - *establish standards or criteria to be used in determining whether rehabilitation or management has been completed in a satisfactory manner (similar to s. 90(c))*
 - *establish standards or criteria for individuals who perform specific actions or roles related to the assessment, rehabilitation, or management of a contaminated site*
 - *issue or cause to be issued a Record of Site Condition for a contaminated site*
-

Duty to Report Release

Section 69 of the act deals with the duty to report the release of a substance into the environment. Under Part VI of the act, the responsibility to report a release lies with the "person responsible" as defined in s. 3(ak) of the act. The definition of "person responsible" does not include consultants. This creates an ethical dilemma for those professionals who are aware of sites or release incidents, but are not required to report them to the department.

Section 69 of the act requires that any "person responsible" for the release of a substance call the department's emergency telephone number to report the release. This requirement is not an appropriate way to deal with the reporting of past releases. The proposed amendment will address the reporting of past releases by requiring that a report be filed with an office of the department.

PROPOSED AMENDMENTS

Duty to Report Release

The department is considering amendments to the Environment Act that will

- *clarify in s. 69 of the act that a "person responsible" is required to report sites that were previously contaminated, as well as emergency spills, as soon as that person knows or ought to know of the contamination (This will help to ensure that the department is aware of sites and can effectively track progress made to manage them.)*
- *define "person responsible" to include consultants, in addition to those included in s. 3(ak), for the purpose of s. 69 only (This will create a level playing field, as all consultants will be required to report.)*
- *differentiate the reporting requirements pertaining to an emergency spill (i.e., environmental emergency) from those pertaining to past releases*
- *add a definition of "environmental emergency" in s. 3 of the act, consistent with the Emergency Spill Regulations*

Duty to Take Remedial Measures

Section 71 of the act outlines the responsibilities associated with remediating a site on which a substance has been released. The current clause "take any other measure required by an inspector or administrator" (s. 71(b)) is broad and the department is proposing to clearly identify the remedial actions that may be required.

Section 169 of the act deals with the recovery of costs respecting emergency measures taken by the department or a municipality. The proposed amendments will clarify which costs can be recovered, including follow-up actions respecting the monitoring or remediation of a site.

PROPOSED AMENDMENTS

Duty to Take Remedial Measures

The department is considering amendments to the Environment Act that will

- *specify some measures that an inspector or an administrator may require in s. 71 of the act, including*
 - *determining a time frame within which a rehabilitation is to take place*
 - *preparing a remedial action plan within a specified time*
 - *implementing a remedial action plan*
 - *preparing and submitting a Record of Site Condition*
 - *rehabilitating the environment to a standard prescribed or adopted by the department within a specified time*
 - *clarify in s. 169 of the act that the costs of carrying out emergency measures, including management and remediation measures, are recoverable by the Minister*
-

Regulation-making Authority—Part VI of the Act

Section 74(1) of the act sets out the authority of the Governor in Council to make regulations respecting the release of substances. At present, the department uses policy to define the qualifications of those who are providing services to assess, rehabilitate, or manage contaminated sites. At some future time regulations respecting these qualifications and the requirements for a Record of Site Condition (proposed for s. 71) may be necessary.

PROPOSED AMENDMENTS

*Regulation-making
Authority—Part VI of
the Act*

The department is considering amendments to the Environment Act that will

- *provide the Governor in Council with the authority to make regulations under Part VI of the act to*
 - *develop standards or criteria for Certificates of Qualification for those involved in the assessment and remediation of contaminated sites*
 - *provide for the requirements of and conditions under which a Record of Site Condition may be issued*
-

Solid Waste-Resource Management

Part IX of the act deals with solid waste-resource management, and Part XVIII of the act deals with penalties and prosecutions under the act, including those for littering. The department has identified several areas relating to solid waste-resource management that should be expanded or included in the act.

The act requires the Minister to establish a solid waste-resource management strategy for the province (s. 92). This strategy was established in 1995 and has been expanded and complemented by solid waste-resource management programs and the development of more specific strategies for various waste streams and activities. Amendments are being considered to update this section and to clarify that the Minister is required to establish programs and strategies for solid waste-resource management in the province.

Solid Waste-Resource Management *cont.*

Section 93 of the act refers to the provincial waste diversion goal of 50 per cent by the year 2000. Nova Scotia was the first province to achieve this goal. The department wishes to maintain the goal and remove the reference to the now expired target date. There is also a need to clarify the base year to which this diversion rate relates.

PROPOSED AMENDMENTS

*Solid Waste-Resource
Management*

The department is considering amendments to the Environment Act that will

- *clarify that the Minister is required to establish programs and strategies for solid waste-resource management in the province*
- *update the waste diversion goal (s. 93 of the act) by removing the reference to the year 2000, and indicate that the rate is based on 1989 disposal rates*

Composting

The public consultation on the Environment Act review raised several issues with respect to composting, including operator training and requirements to consult near-by residents. Section 102(1)(h) of the act allows the Governor in Council to make regulations "establishing guidelines or standards restricting or prohibiting the use or sale of composting products."

PROPOSED AMENDMENTS

Composting

The department is considering amendments to the Environment Act that will

- *broaden s. 102(1)(h) of the act to provide the Governor in Council with the authority to make regulations respecting the establishment of requirements and standards for composting*

Resource Recovery Fund Board

The act provides the Governor in Council with the authority to make regulations with respect to the establishment and operation of the Resource Recovery Fund (s. 102(1)(b) of the act). The Resource Recovery Fund Board is not specifically mentioned in this section.

PROPOSED AMENDMENTS

*Resource Recovery Fund
Board*

The department is considering amendments to the Environment Act that will

- *clarify that the Governor in Council has the authority to make regulations respecting the establishment and administration of the Resource Recovery Fund Board*
-

Littering and Illegal Dumping

The public consultation on the Environment Act review also raised concerns about illegal dumping (or the unauthorized dumping of solid waste). "Litter" is the term used in the act to refer to the many materials disposed of in unauthorized ways, from an individual candy wrapper on the sidewalk, to a load of construction debris dumped on the side of a road. The term "litter" is defined in the Solid Waste-Resource Management Regulations, but not in the act.

The current fine structure for littering needs to be brought in line with other jurisdictions across Canada. The act provides for a maximum fine of \$5,000 for littering (s. 159(3)), but no minimum fine. The fine structure does not differentiate between an offence committed by an individual and an offence committed by a business. There are no provisions to require increased fines for a repeat offender or to allow a court to order an offender to clean up a site.

Solid Waste-Resource Management *cont.*

PROPOSED AMENDMENTS

Littering and Illegal Dumping

The department is considering amendments to the Environment Act that will

- *add a definition of "litter" to s. 3 of the act (This will help to clarify the application of s. 99 of the act, Litter Prevention.)*
 - *establish a revised fine structure for litter offences under s. 159(3) of the act that differentiates between individuals and businesses, and increases fines for repeat offenders (The proposed fine structure is designed to deter potential littering offenders. Fine amounts will be set based on consideration of those established for comparable offences in other jurisdictions across Canada.)*
 - *add a new subsection in s. 166(1) of the act that will enable the court to order an offender to clean up litter, in addition to any fine imposed*
-

Industry and Product Stewardship

The department promotes both industry stewardship and product stewardship as part of its Solid Waste-Resource Management Strategy. However, the act refers only to industry stewardship. The department uses a voluntary approach to encourage industry and product stewardship. This has presented challenges, as some industries have resisted taking responsibility for the products they produce and the effects their activities have on the environment. Industries that do participate in stewardship programs claim they are at a disadvantage because their competitors are not required to make the same commitment and long-term investment. These industries want a level playing field with respect to stewardship initiatives.

PROPOSED AMENDMENTS

Industry and Product Stewardship

The department is considering amendments to the Environment Act that will

- *provide the Minister with the authority to enter into agreements (s. 95 of the act) to encourage product stewardship, in addition to industry stewardship*
 - *designate materials to be subject to stewardship programs (s. 100 of the act) (This will enable the Minister to require stewardship programs in situations where a voluntary approach is not working, and to address concerns of industry that there is not a level playing field.)*
 - *provide the Governor in Council with the authority to make regulations respecting stewardship programs and stewardship agreements*
-

Water-Resource Management

Part X of the Environment Act deals with water-resource management and names the department as the lead agency to manage water resources. Section 104 of the act establishes the department's responsibilities in this regard. This section requires amending to clarify the department's role in promoting sustainable management of water resources.

The act currently requires the establishment of a "water-resource management strategy" (s. 105(2)) and lists a number of powers the Minister may use to assist in the development and implementation of this strategy. The Provincial Drinking Water Strategy, established in 2002, is complemented by programs and strategies for the management of water resources. Amendments are being considered to update this section and to clarify that the Minister is required to establish programs and strategies for water-resource management in the province.

Section 105(3)(i) of the act provides the Minister with the authority to approve and fund water and sewer works in the province. Section 105(3)(o) of the act provides the Minister with the authority to operate a water utility for the province. Amendments are required to reflect the transfer of these responsibilities to other departments.

PROPOSED AMENDMENTS

Water-Resource Management

The department is considering amendments to the Environment Act that will

- *clarify the department's role respecting the sustainable management of water resources*
 - *clarify that the Minister is responsible to establish programs and strategies for the management of water resources in the province*
 - *discontinue the authority of the Minister to*
 - *operate a water utility for the province (s. 105(3)(o) of the act)*
 - *approve and fund water and sewer works (s. 105(3)(i) of the act)*
-

Regulation-making Authority—Part X of the Act

Section 110 provides the Governor in Council with authority to make regulations relating to water. The proposed amendments will provide the authority to make regulations on a broad range of water-resource management issues. The department is also proposing to include regulation-making authority for the On-Site Services Advisory Board in s. 110 of the act.

Section 23 of the act states that the Minister may require "proof of acceptable certification of the laboratory." Administration of this authority may require regulations.

PROPOSED AMENDMENTS

*Regulation-making
Authority—Part X
of the Act*

The department is considering amendments to the Environment Act that will

- *provide the Governor in Council with the authority to make regulations for*
 - *a broad range of water-resource management issues, including drinking water supplies*
 - *the establishment and administration of the On-Site Services Advisory Board*
 - *the certification of laboratories*
-

Inspection and Compliance Tools

Inspections and Investigations

Part XII of the act deals with inspections and investigations. Section 113 gives an inspector the same powers and protections as a peace officer. The amendments proposed for this part will assist inspectors in conducting inspections and investigations.

Section 117 of the act allows an inspector to enter any property to which an approval or certificate relates. The inspector may, from time to time, be required to cross an adjacent property to conduct an inspection. Section 118 requires only the owner or occupier of any place to assist the inspector in carrying out duties pursuant to Part XII of the act. Amendments are proposed to clarify these sections.

The right of entry and inspection in s. 119(1)(a) of the act is limited to facilities that have an approval. There are other regulated facilities where certificates, registrations, variances, and orders have been issued. The authority to conduct an inspection of these facilities to determine compliance with the act and regulations is not included in s. 119(1)(a).

Section 166 of the act deals with court orders related to penalties. The costs of conducting an investigation are increasing. The department is proposing amendments that will provide the courts with the option to order an offender to pay for such costs, in addition to any fine imposed by the courts.

PROPOSED AMENDMENTS

Inspections and Investigations

The department is considering amendments to the Environment Act that will

- provide inspectors the right of access over any property (land or water) in order to carry out an inspection under Part XII of the act*
- specify the scope of an inspector's powers during an inspection—proposed authorized activities include copying documents, operating machinery under certain conditions, taking samples, taking photographs, etc.*
- broaden the requirement to assist inspectors in s. 118 of the act to apply to anyone the inspector reasonably believes is related to or associated with an activity being inspected*
- expand the list of facilities that are subject to inspection in s. 119(1)(a) of the act to include those to which certificates, registrations, variances, orders, and other authority issued pursuant to the act relate*
- add the option in s. 119(1)(a) of the act for an inspector to conduct an inspection to determine compliance with the act and regulations*
- enable the court to order an offender to pay the reasonable costs associated with an investigation, over and above any fines imposed*

Inspection and Compliance Tools *cont.*

Control Order

Part XIII of the act deals with orders. A Ministerial Control Order may be issued in situations where the Minister believes that there has been or will be a contravention of the act. Control Orders direct the person responsible to remedy the adverse effect, clean up the pollution, or take any action necessary to avoid the adverse effect before it occurs. Under the current act, only the Minister has the authority to issue a Control Order. Providing administrators or inspectors with the power to issue a Control Order would provide an efficient, flexible, and effective way to deal with offences such as the improper installation of culverts, water or sewer extensions, and wells.

PROPOSED AMENDMENTS

Control Order

The department is considering amendments to the Environment Act that will

- *introduce Control Orders that can be issued, amended, and revoked by administrators and inspectors to deal with minor offences under the act and regulations in a timely manner and prevent further degradation of the environment*
 - *add the Control Orders referred to above to the offences listed in s. 158 and the penalties listed in s. 159(2) of the act (This will provide the authority to charge and convict a responsible person for contravention of a control order.)*
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Appeals

A "person who is aggrieved" may appeal any decision of an administrator to the Minister (s. 137(1) of the act). A decision of the Minister (except a decision to approve or reject an undertaking in the environmental assessment process (Part IV of the act)) can be appealed to the Supreme Court of Nova Scotia (s. 138(1)). The amendments proposed for Part XIV of the Environment Act will clarify standing to appeal under the act.

Under Section 138(4) of the act an appeal must be filed within 30 days of the date of a decision or order. It is unclear whether this time period applies both to appeals to the Minister and to appeals to the Supreme Court. The 30-day decision notification requirement in s. 137(3) of the act has proven to be too short a time period for consideration of appeals.

PROPOSED AMENDMENTS

Appeals

The department is considering amendments to the Environment Act that will

- *clarify that appeal provisions apply to persons who are directly affected by a decision or order*
 - *introduce flexibility in the time required for the Minister to notify the appellant about a decision under s. 137 of the act—it is proposed that the notification period be increased to 60 days, accompanied by the Minister's authority to extend, waive, or vary this notification period if necessary (This will address the potential for delays in complex cases, or in situations where information is missing or difficult to obtain.)*
 - *clarify that the 30-day time period for commencing an appeal under s. 138 also applies to appeals under s. 137 of the act (This is consistent with the department's past practice in application of this section.)*
 - *provide the Governor in Council with the authority to make regulations respecting appeals under s. 137 of the act*
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Review of the Environment Act

When the Environment Act was proclaimed in 1995, a number of innovative provisions were introduced that were untested in Nova Scotia. For this reason, Section 174 of the act required mandatory review of the legislation after five years of practical experience. Environmental management is a continuously evolving field and the department recognizes the benefits of regular legislative review to ensure that the act remains current.

PROPOSED AMENDMENTS

Review of the Environment Act

The department is considering amendments to the Environment Act that will

- *require a review of the Environment Act every seven years from the time that amendments resulting from the previous review are made (This will keep the act up-to-date and responsive to emerging environmental issues.)*
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Other Proposed Amendments

A number of other minor amendments are proposed for the Environment Act that will

- update the name of the department and the title of the Minister
- provide for consistent use of language throughout the act (e.g., "any person" versus "a person")
- correct typographical errors

In Summary

The Environment Act is progressive legislation that provides Nova Scotia Environment and Labour with the authority and tools to manage and protect the environment in Nova Scotia. The proposed amendments address problem areas and provide mechanisms to make the department more effective in carrying out its responsibilities. The department is committed to continuous improvement and proposes to review the act on a regular basis to ensure that it remains progressive and able to meet the challenges ahead.

Your comments and suggestions are important. Please send written comments on any or all of the proposed amendments presented in this document to

Nova Scotia's Environment Act Amendments

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